



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
) ISCR Case No. 16-03709
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

03/27/2018

Decision

MURPHY, Braden M., Administrative Judge:

Although the personal conduct security concerns are resolved for Applicant, he did not provide sufficient evidence to mitigate the financial security concerns arising from his delinquent debts. Applicant's eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on September 1, 2015. On January 19, 2017, the Department of Defense Consolidated Adjudication Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations and Guideline E, personal conduct.¹

¹ The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines effective within the DOD for SORs issued after September 1, 2006.

Applicant answered the SOR on February 20, 2017, and elected a decision on the written record in lieu of a hearing. On August 10, 2017, Department Counsel submitted the Government's file of relevant material (FORM), including documents identified as Items 1 through 8. Applicant received the FORM on August 23, 2017. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not respond to the FORM, and did not object to the Government's evidence. The SOR and the answer (Items 1 and 3) are the pleadings in the case. Item 2 is a procedural document. Items 4 through 8 are admitted into evidence without objection. The case was assigned to me on December 18, 2017.

On January 31, 2018, I e-mailed the parties and reopened the record until February 9, 2018 to allow Applicant the opportunity to submit documentation. On February 20, 2018, Applicant belatedly responded and sought additional time. I marked and admitted his response as Applicant Exhibit (AE A), and gave him until March 1, 2018 to submit documentation. Applicant did not respond further, nor did he submit additional documentation by that date, and the record closed.²

On December 10, 2016, the Director of National Intelligence issued new National Security Adjudicative Guidelines (AG). The new AGs became effective June 8, 2017 for all decisions after that date, and they supersede the AGs that Applicant received with the SOR.³ Any changes resulting from the implementation of the new AGs did not affect my decision in this case.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a through 1.e and SOR ¶ 2.a with explanations but no documents. I have incorporated his admissions and other comments into the findings of fact. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant is 28 years old. He has never married and has no children. Applicant attended college for about two years (2007-2009). He used student loans to finance his education. He then worked for a large retailer for about two months, until he was terminated. He served in the United States Air Force from November 2009 to May 2013, and held a security clearance. (Items 4, 8)

When he was in the Air Force, Applicant had significant issues with tardiness, failing to follow orders, failing to report to duty, and with failure to follow proper maintenance procedures. He received several reprimands and was counseled to improve his behavior. He then received nonjudicial punishment, including reduction in rank, under

² Hearing Exhibit I. Department Counsel confirmed that she also did not receive any documents from Applicant by the extended deadline.

³ The new AGs are available on the DOHA website at <http://ogc.osd.mil/doha/DIRECTIVE%202017.pdf>.

the Uniform Code of Military Justice. Ultimately, he was given a general discharge under honorable conditions, in May 2013. Applicant explained in his background interview and his Answer that he had been suffering from depression or mental distress, which led to insomnia, and ultimately to his pattern of tardiness. He indicated in his interview that he sought mental health counseling for the problem in the Air Force. In his Answer, he acknowledged his wrongdoing, and asserted that he was capable of continuing to follow the rules and regulations required of someone granted access to classified information. (Items 3, 4, 8) (SOR ¶ 2.a)

After leaving the Air Force, Applicant worked for a defense contractor for about 14 months (June 2013 to August 2014) until he was terminated because of excessive absences. He was then unemployed until May 2015. Since then, he has been employed as an aircraft technician with a large defense contractor. (Items 4, 8)

When Appellant submitted his SCA, he disclosed a defaulted federal student loan. His background investigation included a September 2015 credit report. The Government's evidence also includes more recent credit reports from October 2016 and August 2017. He also discussed his finances in his background interview, in June 2016. (Item 8)

Under Guideline F, the SOR details delinquent debts totaling about \$46,868. Almost all of the debts are two student loans (SOR ¶ 1.a, for \$32,017 and ¶ 1.e, for \$13,638). The three remaining debts total \$1,213. They include two cable bills (¶ 1.b, for \$420, and ¶ 1.c, for \$119), and an unpaid judgment from 2014 related to an apartment lease (¶ 1.d, for \$674).

Both cable bills are listed on Items 5 and 6, as is the judgment. The cable bill at ¶ 1.b is also listed on Item 7. The student loans are listed as in collection status as of September 2015. (Item 5) By October 2016, SOR ¶ 1.a remained in collection, but Applicant's other student loans (including ¶ 1.b) had been refinanced. (Item 6) By August 2017, his federal and private student loans were in deferment. (Item 7)

Applicant admitted each debt in his Answer. He said that the cable bills and the judgment debt had been paid. He said his student loans had been consolidated and that he was current on his payments. He offered no details or documentation. He indicated that he had requested to have documentation sent to the credit bureaus to verify resolution of the debts. (Item 3)

In response to my order reopening the record, Applicant acknowledged that he had not provided documentation, and said he thought his creditors would send documents to the credit bureaus "to clear the debt from my name." He indicated that he would contact his creditors for appropriate records. He also said he had recently been "laid off" from one of his company's job sites, and transferred elsewhere. (AE A)

Applicant did not offer an explanation for his debts with his answer. In his interview, he attributed his inability to pay his debts to low income. (Item 8 at 6) He did not address

his monthly income, expenses or his assets in his background interview, his Answer, or otherwise.

Policies

It is well established that no one has a right to a security clearance.⁴ As the Supreme Court noted in *Department of the Navy v. Egan*, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.”⁵

The adjudicative guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.”

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable security decision.”

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

⁴ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) (“it should be obvious that no one has a ‘right’ to a security clearance”).

⁵ 484 U.S. at 531.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for financial considerations is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.⁶

AG ¶ 19 provides conditions that could raise security concerns. Disqualifying conditions AG ¶¶ 19(a): "inability to satisfy debts"; and 19(c): "a history of not meeting financial obligations" are applicable, given the record evidence of Applicant's delinquent debts.

The financial considerations guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances; and

⁶ See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

It is reasonable to expect applicants to present documentation about the satisfaction of specific debts.⁷ Applicant did not do so. However, the government's evidence includes an August 2017 credit report, which post-dates the SOR. It corroborates Applicant's assertion that his student loan debt has now been consolidated. It also shows that, at that time, his student loan debt was in deferment and was not past due.

The student loan debt is also dated, as it relates to his two years in college (2007-2009). A security clearance adjudication is not a proceeding aimed at collecting an applicant's personal debts. Rather, it is a proceeding aimed at evaluating an applicant's judgment, reliability and trustworthiness. Accordingly, even though Applicant's student loan debt is now consolidated and in deferment, I can consider that he failed to take steps to resolve this debt in a timely manner.⁸ Applicant also did not set forth any plan to pay his student loan debt in the future.

Applicant indicated, but did not document, that his other three SOR debts have been paid. He also provided no evidence of his current income stream or his ability to pay his debts and to remain out of financial trouble in the future. He therefore provided insufficient evidence from which to conclude that his financial issues are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant's unstable employment in the years before he began his current job in May 2015 likely contributed to his financial issues and his numerous delinquent debts. The first prong of AG ¶ 20(b) therefore has some application. However, this is limited because Applicant has a track record of employment issues and job terminations before, during, and after his time in the Air Force. He has also provided insufficient information to establish that he acted responsibly under the circumstances in handling his debts. AG ¶ 20(b) therefore does not fully apply. Similarly, Applicant did not establish that he "initiated and is adhering to good-faith effort to repay overdue creditors or otherwise resolve debts." AG ¶ 20(d) does not apply. Without more information, I am unable to conclude that Applicant's financial issues are fully mitigated.

⁷ See ISCR Case No. 09-07091 at 2 (App. Bd. Aug. 11, 2010) (quoting ISCR Case No. 04-10671 at 3 (App. Bd. May 1, 2006)).

⁸ See, e.g., ISCR Case No. 15-02326 at 3 (App. Bd. Oct. 14, 2016).

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. . .

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of: . . . (3) a pattern of dishonesty or rule violations;

Applicant was unable to adapt to military life. He had a pattern of tardiness and failure to follow orders. This led to reprimands, nonjudicial punishment, and, ultimately to his general discharge from the Air Force, in 2013. AG ¶ 16(d)(3) applies. In addition, Applicant's issues in the Air Force constitute "conduct involving questionable judgment . . . [and] unwillingness to comply with rules and regulations," under the Guideline E general security concern. (AG ¶ 15)

AG ¶ 17 sets forth the applicable mitigating conditions under Guideline E:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

Applicant acknowledged his behavior and sought counseling for its underlying causes in the Air Force (albeit to little effect). His issues with tardiness were not limited to

his time in the Air Force, since he was also terminated for tardiness in his next job. However, he has also acknowledged his wrongdoing. He has also worked for his current employer since May 2015 and there is no indication of an ongoing problem. AG ¶¶ 17(c) and (d) apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(a), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines E and F in my whole-person analysis. While the personal conduct security concerns are resolved, Applicant did not provide sufficient documented information that his financial issues are in the past or that they are unlikely to recur. He did not establish that he is resolving his debts in a good-faith, responsible manner. Security concerns about his financial situation remain unresolved. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
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Subparagraphs 1.a-1.e:	Against Applicant
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Paragraph 2, Guideline E:

FOR APPLICANT

Subparagraph 2.a:

For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

Braden M. Murphy
Administrative Judge